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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,204	02/23/2006	Kenji Ando	0445-0363PUS1	1718
2292 7590 02/18/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER SALVATORE, LYNDIA				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
02/18/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/569,204

Applicant(s)

ANDO ET AL.

Examiner

LYNDA M. SALVATORE

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) 5, 9 and 16 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 8, 10-13 and 15 is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/9/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment and accompanying remarks filed 10/28/08 have been fully considered and entered. Claims 6 and 10 have been amended and claims 7 and 14 have been canceled as requested. Applicant's amendments are found sufficient to overcome the rejections of claims 6,8,10 and 15 are found sufficient to overcome the anticipation rejections set forth in section 3 of the Office Action dated 7/28/08. As such, these rejections are hereby withdrawn. Applicant's arguments, however, are not found persuasive of patentability with respect to claims 1-2 for reasons set forth herein below.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-2 stand rejected under 35 U.S.C. 102(a) as being anticipated by Jarpenberg et al., US 2003/0144643.

Applicant argues that in contrast to the invention cited in the prior art, the instant invention comprises a joint arranged within the elastic members. That is a joint is arranged between two different elastic members. Whereas the prior art of Jarpenberg et al., teach a joint is arranged within one elastic member. Applicant submits that the joints of Jarpenberg et al., overlap with the portion wherein the multi-strand elastic yarn is arranged. In response, it is respectfully pointed out that Applicant is not claiming such features in claim 1. Applicant does claim a joint arranged within the elastic member or that the joint is arranged between two different elastic members. Rather Applicant

claims two sheets discontinuously bonded as joints and elastic members arranged in the extensible portion avoiding the joints between the sheet materials. The Examiner asserts that the prior art of Jarpenberg et al., presently meets the limitations set forth in instant claims 1 and 2.

The published patent application issued to Jarpenberg et al., teach orienting multi-strand elastic filaments between two non-woven layers (abstract and section 0012). Jarpenberg et al., teach that the elastic strands are fixed at number locations along the at least one of the two non-woven substrate layers (section 0012). With regard to the limitation regarding the plurality of folds, said non-woven substrate layers are gatherable (section 0012). Such gathering would produce the claimed plurality of folds (figure 4). Jarpenberg et al., teach thermal bonding to fix the elastic multi-stands to the gatherable non-woven substrates (section 0047).

Allowable Subject Matter

4. Claims 3-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Specifically, the prior art of record fails to teach or fairly suggest the limitations set forth in the above claims. An art search did not produce any substantial art for which to base a rejection and presently there is no motivation to combine references to form an obviousness type rejection.

5. Claims 6, 8, 10-13 and 15 are found allowable in view of Applicant's amendments.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNDIA M. SALVATORE whose telephone number is (571)272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hendricks Keith can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 12th, 2008
Art Unit 1794

/Lynda Salvatore/
Primary Examiner